

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ST. LAWRENCE

JOHN WILMER BRUNELL

Plaintiff(s),

-against-

ROMAN CATHOLIC DIOCESE OF OGDENSBURG

Defendant(s).

Index No.

Summons

Date Index No. Purchased:

To the above named Defendant(s)

Roman Catholic Diocese of Ogdensburg, 622 Washington Street, Ogdensburg, NY 13669

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Defendants' principal place of business,
which is in St. Lawrence County

Dated: August 14, 2019

Seeger Weiss LLP

by 

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Attorneys for Plaintiff

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ST. LAWRENCE

JOHN WILMER BRUNELL,

Index No. _____

Plaintiff,

-against-

COMPLAINT

THE ROMAN CATHOLIC DIOCESE
OF OGDENSBURG

JURY TRIAL DEMANDED

Defendant.

Plaintiff, John Wilmer Brunell, by and through the undersigned attorneys, complains of Defendant, The Roman Catholic Diocese of Ogdensburg, and alleges on personal knowledge as to himself and on information and belief as to all other matters, as follows:

PARTIES

1. Plaintiff John Wilmer Brunell is a fifty-five-year-old resident of New York. Plaintiff was approximately eleven to fifteen years old at the time of the sexual abuse alleged herein.

2. Defendant Roman Catholic Diocese of Ogdensburg, New York a/k/a Diocese of Ogdensburg (“the Diocese”) was and continues to be an organization or entity which includes, but is not limited to, civil corporations, decision making entities, officials, and employees, authorized to conduct business and conducting business in the State of New York with its principal place of business at 622 Washington Street, Ogdensburg, New York 13669.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over the Defendant pursuant to CPLR §§301 and 302, because Plaintiff's claims arise from the tortious acts of Defendant that were committed in the State of New York.

4. The Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

5. Venue is proper in the County of St. Lawrence under CPLR §503 because all or a substantial part of the events or omissions giving rise to this cause of action occurred in St. Lawrence County, New York.

6. The federal courts lack jurisdiction over this suit. Plaintiff's claim raises no federal question nor does Plaintiff seek relief under a federal law, statute, regulation, treaty, or the United States Constitution. Accordingly, Plaintiff's right to relief does not depend on the resolution of a substantial question of federal law. Further, this lawsuit cannot be removed because there is no complete diversity, as at least one Defendant resides or has their principal place of business in New York. Therefore, removal would be improper.

FACTS

7. John Fallon ("Fallon") was ordained a Roman Catholic priest in 1955 and served within the Ogdensburg Diocese at Church of the Holy Angels, 522 Devils Den Road, Altona, New York 12910 for approximately ten years.

8. Prior to his time at Holy Angels, Fallon served as a priest at Holy Family Church in Watertown, NY; Holy Name of Jesus Church in Tupper Lake, NY; St. Mary Church in Ticonderoga, NY; and St. Matthew Church in Black Brook, NY.

9. When Plaintiff was approximately ten years old, his sister was dying of cancer. Fallon came to the hospital to visit Plaintiff's sister while Plaintiff was visiting her as well. When she was in the bathroom, Fallon rubbed Plaintiff and put his hands inside Plaintiff's pants. Fallon also took Plaintiff's hand and forced Plaintiff to touch his bare penis.

10. When Plaintiff was approximately eleven years old, he became an altar boy at Church of the Holy Angels in Altona, New York. Plaintiff was required to report to the church after school to get ready for mass. During lent, he attended the church every day. When it was not lent season, he still attended the church at least three times per week.

11. While he was at the church, Fallon constantly made physical contact with him and would consistently hug, touch, and fondle him.

12. Over time, Fallon's hugging, touching, and fondling escalated to unzipping his pants and masturbating him. This occurred at least two times per week.

13. In addition to being at church to serve as an altar boy, Plaintiff also attended bingo at the church every Tuesday night with his grandfather. Fallon would follow Plaintiff into the bathroom on these occasions and unzip his pants and masturbate him.

14. When Plaintiff turned fifteen years old, he quit being an altar boy to escape Fallon's sexual abuse.

15. In 1985, Fallon was arrested and charged with child pornography after attempting to develop photographs of a young boy in nude and sexually explicit poses. He pleaded guilty and was convicted of receiving child pornography, a felony, in 1986.

16. After his conviction, he remained a priest but was not permitted to serve in any priestly ministry.

17. Defendant listed Fallon as "absent on sick leave" from 1989-2000.

18. Fallon passed away on February 5, 2005.

19. John Fallon is listed on Defendant's website as a Diocesan Priest removed from ministry or deceased or left ministry prior to a finding of reasonable grounds by the Diocesan Review Board and/or the Diocesan Bishop due to sexual misconduct with a minor or vulnerable adult.

20. Bishop Terry LaValley released this list of credibly accused priests in 2018.

21. Defendant continues to conceal important information about the priests on that list and the names and information about accused priests not publicly disclosed. Additional information has also not been disclosed about the credibly accused priests' patterns of grooming and sexual abuse, and the Defendant's knowledge thereof.

22. As a direct result of the Defendant's conduct described herein, Plaintiff suffered and will continue to suffer great, permanent harm, including but not limited to severe emotional distress, humiliation, embarrassment and loss of self-esteem.

23. Plaintiff has also suffered a severe disruption of his enjoyment of life, as well as his relationships with family, fellow Catholics, and others. His religious faith, together with its fellowship and other benefits, has been destroyed.

24. The trauma suffered by Plaintiff has resulted in chronic mental health issues, all of which have required and/or will require counseling and other treatment.

**CAUSES OF ACTION AGAINST DEFENDANT ROMAN CATHOLIC DIOCESE OF
OGDENSBURG**

A. VICARIOUS LIABILITY/*RESPONDEAT SUPERIOR*

25. Plaintiff incorporates each and every allegation set forth in every one of the afore-numbered paragraphs as if fully set forth herein.

26. Plaintiff affirmatively pleads that any alleged tortious acts of Fallon were committed while he was acting in the course and scope of his employment with Defendant, or while he were acting as an agent or on behalf of Defendant, and are thus imputed to Defendant under a legal theory of *respondeat superior*.

B. NEGLIGENCE

27. Plaintiff incorporates each and every allegation set forth in every one of the aforementioned paragraphs as if fully set forth herein.

28. Defendant held itself out as providing safe places for religious worship, spiritual development and growth, learning and education, or engaging in youth and/or community activities. Defendant had, adopted, and/or assumed an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for him.

29. Defendant owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Diocesan clergy, including Fallon, in their roles as teacher, priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer.

30. Defendant breached its duties of care in one or more of the following ways by and through the acts and omissions of its employees, servants and agents, including supervisory and managerial personnel, all acting at all material times within the course and scope of their employment, service or agency:

- a. Negligently hiring Fallon as it knew or should have known that he posed a threat of sexual abuse to children;
- b. Negligently retaining Fallon as it knew or should have known that he posed a threat of sexual abuse to children;
- c. Negligently directing Fallon as it knew or should have known that he posed a threat of sexual abuse to children;

- d. Negligently supervising Fallon as it knew or should have known that he posed a threat of sexual abuse to children;
- e. Failing to investigate the background of Fallon before placing him into close contact with Plaintiff;
- f. "Covering up" or otherwise failing to disclose the harmful acts of Fallon and other abusive clergy;
- g. Failing to warn Plaintiff, his parents and/or legal guardians of Fallon's conduct despite having actual or constructive knowledge of Fallon's sexually abusive tendencies and/or misconduct;
- h. Assigning or allowing Fallon to have contact with Plaintiff despite having constructive and/or actual knowledge sexual abuse;
- i. Failing to report Fallon's sexual abuse to appropriate law enforcement agencies;
- j. Minimizing, ignoring or excusing priestly misconduct over a period of decades;
- k. Failing to provide a safe environment to children and other parishoners within the churches, sacristies, schools and rectories operated and/or owned by the Diocese;
- l. Failing to train priests and Diocesan employees to identify signs of child molestation by fellow employees;
- m. Failing to implement and maintain effective policies and procedures to prevent sexual abuse and abuse of children;
- n. Failing to investigate complaints of abuse properly;
- o. Failing to exercise due care under the circumstances.

31. As a foreseeable, direct, and proximate result of Defendant's negligence, Plaintiff has suffered and will continue to suffer the injuries described herein.

C. GROSS NEGLIGENCE

32. Plaintiff incorporates each and every allegation set forth in every one of the aforementioned paragraphs as if fully set forth herein.

33. Defendant's acts and omissions, as previously described, were committed with complete and reckless disregard for, and with willful, wanton, and actual conscious indifference to, the rights, safety, and welfare of Plaintiff and the general public. The nature of Defendant's acts and omissions were of such a nature as to constitute gross negligence and malice. Specifically, Defendant's undertook a continuous course of action in the form of conscious decisions, with subjective knowledge and awareness of the risks and hazards presented by each decision as discussed above and incorporated herein, to expose Plaintiff and others to sexual abuse and/or sexual assault, and exercised not even slight care or diligence. When viewed objectively from the standpoint of Defendant at the time of their occurrence, said acts and omissions involved reckless disregard of or indifference to an extreme degree of physical, mental, and psychological risk and danger, considering the probability and the magnitude of the potential harm to others. Defendant committed various acts and omissions constituting gross negligence, as outlined above. Such gross negligence was a proximate cause of the occurrence and Plaintiff's injuries and damages.

D. BREACH OF FIDUCIARY DUTY

34. Plaintiff incorporates each and every allegation set forth in every one of the aforementioned paragraphs as if fully set forth herein.

35. There is a fiduciary relationship between Plaintiff and Defendant. This relationship is based on the fact that Plaintiff trusted his physical, mental, psychological, and spiritual care to the priests, officers, directors, officials, employees, volunteers, servants, and/or all those acting as agents of Defendant or on its behalf, who held themselves out as beholden to a spiritual and interpersonal duty to provide advice, benefit, and guidance to Plaintiff.

36. Because of this fiduciary relationship, Defendant was required and had a duty to act in the best interests of Plaintiff and to protect him while he was a minor child.

37. Defendant breached its fiduciary duty to Plaintiff.

38. As a foreseeable, direct, and proximate result of Defendant's breach of fiduciary duty, Plaintiff has suffered and will continue to suffer the injuries described herein.

E. BREACH OF NON-DELEGABLE DUTY

39. Plaintiff incorporates each and every allegation set forth in every one of the afore-numbered paragraphs as if fully set forth herein.

40. When Plaintiff was a minor, he was placed into the care of Defendant for the purpose of providing Plaintiff with a safe environment in which to receive an education and/or participate in religious worship, spiritual development, and community service. Because Defendant was entrusted with the care of Plaintiff while he was a minor child, there existed a non-delegable duty of care that went from Defendant to Plaintiff.

41. Since Plaintiff was a minor child at the time, Defendant was in the best position to prevent the abuse that Plaintiff suffered at the hands of Fallon, and/or stop such abuse when they learned of it.

42. Defendant failed to prevent the abuse and harm Plaintiff suffered, and/or they failed to stop it once they were aware of or should have been aware of the abuse. This failure was a breach of Defendant's non-delegable duty to Plaintiff.

43. As a foreseeable, direct, and proximate result of this breach, Plaintiff suffered significant injuries and long-lasting damages.

F. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

44. Plaintiff incorporates each and every allegation set forth in every one of the afore-numbered paragraphs as if fully set forth herein.

45. As described above, Defendant owed Plaintiff various duties, which it negligently breached. Defendant's negligence unreasonably endangered Plaintiff and caused him to fear for his own safety.

46. As a foreseeable, direct, and proximate result of Defendant's negligence, Plaintiff suffered severe injuries, including but not limited to mental and emotional distress.

G. BREACH OF DUTY *IN LOCO PARENTIS*

47. Plaintiff incorporates each and every allegation set forth in every one of the aforementioned paragraphs as if fully set forth herein.

48. While he was a minor, Plaintiff was entrusted by his parents to the control of Defendant for the purpose of providing Plaintiff an education and spiritual development.

49. During the times that Plaintiff was in the facilities or programs owned, conducted or approved by Defendant, he was under its control and supervision of Defendant. Defendant owed a duty to Plaintiff to act *in loco parentis*, and to prevent foreseeable injuries.

50. Defendant breached its duty to act *in loco parentis*. As a foreseeable, direct, and proximate result of that breach of duty, Plaintiff suffered injuries.

H. FRAUDULENT CONCEALMENT

51. Plaintiff incorporates each and every allegation set forth in every one of the aforementioned paragraphs as if fully set forth herein.

52. For many years after Plaintiff's abuse at the hands of Fallon, Defendant engaged in a conscious, deliberate plan to conceal the abuse, including but not limited to:

- a. Concealing from the public the sexual abuse committed by Fallon;
- b. Concealing the identities of Fallon and other pedophilic priests;
- c. Concealing from appropriate law enforcement officials the sexual abuse committed by Fallon against Plaintiff and/or other minors;

- d. Impeding or otherwise preventing Plaintiff and other victims from pursuing legal action against Fallon.

53. Defendant had a duty to disclose the information it concealed in paragraph 52 and its concealment therefore amounted to a misrepresentation.

54. Defendant concealed this information with fraudulent intent, with the goal of inducing reliance.

55. Plaintiff, and others, justifiably relied upon Defendant's concealment of this information.

56. As a foreseeable, direct, and proximate result of Defendant's concealment, Plaintiff suffered significant injuries.

DAMAGES

57. Plaintiff seeks compensation for the following damages that resulted from his abuse and defendant's other culpable acts and omissions:

- a. Past mental anguish of Plaintiff, and that he will, in all probability, suffer in the future;
- b. Past physical pain and suffering of Plaintiff, and that he will, in all probability, suffer in the future;
- c. The medical expenses that Plaintiff has incurred in the past and will, in all probability continue to incur in the future;
- d. Past and future lost wages;
- e. Loss of earning capacity;
- f. Cost of suit;
- g. Such reasonable and necessary attorney's fees as are allowed by law;
- h. Exemplary damages; and
- i. Any and all other damages to which Plaintiff may be justly entitled.

PRESERVATION OF EVIDENCE

58. Plaintiff hereby requests and demand that Defendant preserves and maintains all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit, or the damages resulting therefrom, including photographs; videotapes, audiotapes; recordings; business records; medical records; billing records; estimates; invoices; checks; correspondence; memoranda; files; facsimiles; emails; voice mail; text messages; investigations; cellular telephone records; calendar entries; and any electronic image, data, or information related to Plaintiff(s), the references incident, or any damages resulting therefrom. Failure to maintain such items will constitute spoliation of the evidence.

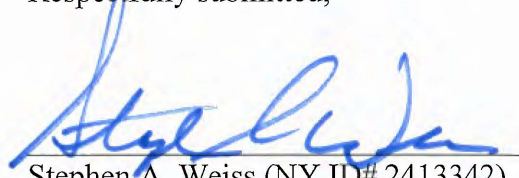
JURY DEMAND

59. Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays that Defendant be cited in terms of law to appear and answer herein, that upon final trial and hearing hereof, that Plaintiff recovers damages from Defendant in accordance with the evidence; that Plaintiff recovers costs of court herein expended; that Plaintiff recovers interest to which Plaintiff is justly entitled under law, both prejudgment and post-judgment; that Plaintiff recovers actual damages; that Plaintiff is entitled to recover compensatory damages; that Plaintiff recovers punitive damages; and for such other further relief; both general and special, both in law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,



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